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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,820	08/18/2003	James G. Prather	MW015	8037

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EXAMINER

SWENSON, BRIAN L

ART UNIT PAPER NUMBER

3618

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,820

Applicant(s)

PRATHER ET AL.

Examiner

Brian Swenson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 33,37 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 and 34-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species I (Figures 1-5) in the reply filed on 19 November 2005 is acknowledged.

An action on the merits of claims 1-32 and 34-36 follows below.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "child's seat 202" mentioned in paragraph [0030]. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "second container" as claimed in claim 15 and "third

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container” as claimed in claim 16. The claims have been examined with the “second container” to be the tray (312) and the “third container” to be tray (302).

Claim Objections

4. Claim 14 and 15 is objected to because of the following informalities:

- Claim 14 is incomplete. The claim ends with, “...said seat portion being disposed below the_____ [blank added by the examiner for emphasis]”. According the claim has only been examined up to the limitation, “a seat portion on which a child sits when said child seat is in the functional position”.
- the phrase “surface means” in line 6 of claim 15 is unclear. The examiner could not find the limitation “surface means” in the specification and is unsure what “surface means” constitutes. The examiner suggests removing the word—surface—.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 11, 15-23, 25-30 and 36 are replete with functional and indefinite language and are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11, 15 and 25 recite the limitation, “***conventional***” ***shopping carts***. The limitation, “***conventional***” ***shopping carts*** is not of proper scope as, “***conventional***”

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shopping carts have not been positively recited, leaving it unclear and indefinite as to what is encompassed by the comparison with the claimed shopping cart and the "conventional shopping cart". Further the use of quotes around the word—conventional—further add indefiniteness. The word conventional is known in the art; the use of quotes typically indicates an *ad hoc* or limited definition. In this case the use of quotes cause confusion, and it is unclear what "conventional" refers to in this case. If two carts have similar wheels are they considered "conventional"?

There is insufficient antecedent basis for these limitations in the claims.

Claims 19-20 recites the limitation "the pivoting rear gate of said container" in the last lines of claims 19-20. There is insufficient antecedent basis for the limitation "the pivoting rear gate" in the claim.

Claim 36 recites the limitation "the upper rim of the rear portion of the basket" in the last lines of claim 36. There is insufficient antecedent basis for the limitation "the upper rim" in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-17, 24-32 and 34-36, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,507,507 issued to Davidson.

Davidson, teaches in Figures 1-9 and respective portions of the specification of a: shopping cart (10) including: a wheeled base (rails 22,24 and casters 14), a container (18B) supported by the base, a gate (58) pivotably supported (see Figure 5) on a horizontal support rod located at the rear of the container, a pedestal (36) formed on the base for supporting a container thereon, the pedestal being secured to the base at a location between the forward and rearward ends of the base, the container being supported on the rear of the table portion pedestal so that the rear of the container is disposed forwardly of the rear of the base, and a merchandise (38) carrier (or second carrier) disposed between and attached to the rear of the wheeled base and the pedestal (see at least Figure 3 and Col. 4, lines 20-25). See Figure 2 where the pedestal is shown with a slight inclination where the front of the pedestal is placed higher than the rear, a U-shaped handle member (66) located a substantial distance upward from a basket (18b) that is part of the container, two rods (26) connecting to a forward attachment of the handle and to the pedestal and two rods (32) for connecting a rearward attachment of the handle to the base. Davidson, teaches of two hinge rods (62) for pivoting of a rear gate; Figure 5. Davidson teaches in Figure 6 of a child seat that can be attached to the rear of the basket and shows in Figure 5 the child seat can be pivoted to a nonfunctional position. The pedestal table is supported by elements (36). These are metal and taken to be resilient in that they support the basket by exhibiting their inherent spring like capabilities. Davidson shows in Figure 1 a third container (18a) disposed above the first container (18b). Figure 4 shows the cart has a forward taper, where the rear is wider than the front of the cart.

In regards to claims 26-30, Davidson shows a pair of (62; Figure 6) cross members for supporting a gate (see Figure 5, where the gate is shown pivoted); Davidson shows a second merchandise carrier (either carrier 18b or 38 or carriers 38 located in the baskets) disposed above the base and in the vicinity of the handle.

In regards to claim 31, Davidson teaches of a shopping cart, comprising: a frame including a wheeled base (rails 22,24 and casters 24) having a rear and a handle (66 and 26) extending upwardly from the rear of said base, a first basket (18a) mounted to an upper portion of said handle (Figure 1), said first basket including a child seat (Figure 6) and protective panels (see Figure 1 and 6; where wire panels are shown) disposed on opposite sides of said child seat, and a pedestal (36) mounted to said frame and supporting the bottom of said first basket, said pedestal being disposed forwardly of the rear of said base (Figure 5). Davidson shows the child seat mounted (via element 64) to the handle (26).

In regards to claim 36, Davidson teaches of a basket for a shopping cart having a wheeled base (rails 22,24 and casters 24), a handle portion (66 and 26) connected to the wheeled base, and a first panel connected to said handle portion (see elements 59, 62, 64 shown connected to the handle in Figure 6), said basket comprising: side, front and bottom panels which cooperate with said first panel to define a container having a floor and four sides (Figure 1), and side panel extension members (for example element 70; Figure 1) extending upwardly from, and above, an upper rim of the rear portion of the basket.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 18-23, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson.

Davidson, as disclosed above in reference to claims 1-17, discloses the claimed invention including teaching of a pair of horizontal rods (62) separated vertically, but does not teach of the rods connected to the spine (26). Davidson shows in Figure 2 the upper rod (62) lies nearly in substantially the same plane as the handle and forms a pivot connection for the rear gate; Figure 5. It would have been obvious to one having ordinary skill in the art at the time of invention to connect the pair of horizontal rods to the spine, one would be motivated to connect the rods to the spline to increase the strength and robustness of the cart.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,644,674 issued to Simard teaches of a shopping cart with multiple containers.

U.S. Patent No. 6,406,041 issued to Rea teaches of a shopping cart with an additional storage capacity.

U.S. Patent No. 5,791,666 issued to Mainard teaches of a shopping cart with a plurality of panels for walls.

U.S. Patent No. 5,553,876 issued to Trubiano teaches of a nestable shopping cart and teaches of a lower tray for storing items.

U.S. Patent No. 5,401,042 issued to Roger teaches of a pedestal for a shopping cart.

U.S. Patent No. 5,350,182 issued to Hurst teaches of a shopping cart with an integral undercarriage for holding items.

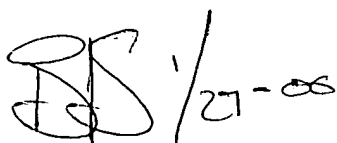
U.S. Patent No. 3,503,62 issued to Romero, U.S. Patent No. 3,361,438 issued to Davis, U.S. Patent No. 3,112,934 issued to Buczak, U.S. Patent No. 2,903,269 issued to Hennion, and U.S. Patent No. 2,764,419 issued to Enders all teach of other various designs for shopping carts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Swenson whose telephone number is (571) 272-6699. The examiner can normally be reached on M-F 9-5.

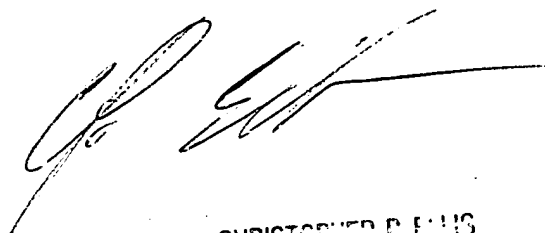
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


bls

Brian Swenson
Examiner
Art Unit 3618


CHRISTOPHER D. ELLIS
EXAMINER
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